The Solicitors Journal

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THE

SOLICITORS' JOURNAL

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CURRENT TOPICS

Birthday Honours

WE congratulate Mr. LESLIE ERNEST PEPPIATT, M.C., President of The Law Society, upon whom a knighthood is to be conferred. Readers are already aware of the many services which Mr. Peppiatt has rendered to the profession not least of which was his recent outstandingly successful tour of Australia. Two other names in the list of Knights Bachelor are of particular interest to solicitors. Mr. LESLIE CARR GAMAGE, M.C., chairman and managing director of the General Electric Company, Ltd., was awarded honours in The Law Society's final examination in 1914, and Alderman EDWARD PERCY RUGG, J.P., who practises in London, was admitted in 1929. A full list of the honours of legal interest will be printed in our next issue.

Life Assurance Policies and Estate Duty

DURING the Commons Committee Stage last week on cl. 26 of the Finance Bill, designed to reverse the effect of *Re Hodge's Policy* [1958] Ch. 239, an amendment was carried to assimilate the positions where the deceased assigned the policy to the donee and where he settled it on him. The SOLICITOR-GENERAL succeeded in convincing members that the clause's wording does not prejudice the freedom from aggregation enjoyed by policies falling within s. 11 of the Married Women's Property Act, 1882, a point on which we recently expressed a similar opinion (p. 384, *ante*). The Government sponsored an amendment giving marginal relief where the property brought into charge only slightly exceeds £500 in respect of the proceeds of a policy ; this was necessary because cl. 26 excludes the operation of s. 38 of the Finance Act, 1957, which makes generally applicable such marginal relief. It was suggested that where the proceeds of a policy consisting of something other than cash are charged with estate duty, they should be valued not at the date of death but at the date of the policy's maturity. This was rejected on the ground that it was against the general scheme of the estate duty provisions, but it is a reminder that by the writing of suitable policies it may be possible to minimise the impact of estate duty.

Reservation of Benefits

THE Commons passed a new clause to the Finance Bill by which it is proposed to amend the law relating to gifts *inter vivos*, partly to the advantage of the taxpayer and partly to the advantage of the Crown. In *Chick* v. *Commissioner of Stamp Duties* [1958] A.C. 435, the Judicial Committee of the Privy Council, considering an Australian enactment

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similar to the English law of estate duty in circumstances where a deceased person had made a gift *inter vivos* of a fee simple in a piece of land and subsequently had been in occupation of a term of years absolute in the same land (which term had been created by a lease at a rack rent), held that he had not been excluded from the property taken under the gift. Some lawyers have felt that this decision could not be applied in English law because it seems to proceed upon the basis that a subject can own land which in England is impossible. He can own a fee simple in land, or a fee tail in land or a term of years in land, but nothing more: it follows that, if the property taken under the gift is a fee simple, the donor cannot have an interest in it by being in possession of a term of years. Be that as it may, it is now proposed, where any question arises of the reservation of a benefit, that in the case of property in the form either of interest in land or of chattels, retention or assumption by the donor of actual occupation of the land or actual possession of the chattels shall be disregarded if it is for full consideration in money or money's worth. This goes somewhat further than reversing the decision of the Judicial Committee: a man may give away valuable chattels and then hire the use of them and, providing the hire which he pays to the donee is full consideration in money or money's worth, all will be well. As a *quid pro quo* the opportunity was taken of conferring an advantage upon the Crown. As appears from such cases as *Lord Advocate* v. *McTaggart-Stewart* (1906), 8 F. 579, a donor may make a gift to a donee and the donor may afterwards derive some benefit from the donee, but this does not amount to a reservation unless it can be connected with the gift. In order to assist the Revenue authorities in so connecting it, it is proposed that any benefit obtained, whether by reference to the gift or by reference to any operations associated therewith by reason of the Finance Act, 1940, s. 59, shall be treated as relevant.

Disqualification

If motor cars had been invented when Gilbert wrote "The Mikado" it is probable that the essay on penal policy which that opera contains would have made some reference to those who drive motor cars dangerously, carelessly or under the influence of drink. We may ignore for the moment some of the more radical proposals for making the punishment fit the crime, such as compelling offenders to spend time in the casualty wards of hospitals or requiring them to drive about for a period with some humilating and distinctive mark on their cars. There is one penalty which is particularly appropriate for erring motorists but which for some reason is used only sparingly, and we are not surprised that in the Lords last week several speakers stressed the importance of disqualification as a penalty. At the risk of incurring the wrath of our most virtuous readers, we hazard the guess that nearly every one of us who is a motorist has at one time or another done something which in unfavourable circumstances would have brought him within the scope at least of s. 12 of the Road Traffic Act, 1930. We are all liable to lapses and to be tempted to take chances. Our natural virtue is strengthened by three things: by the humiliation of having to appear in court, by the prospect of a fine and by the possibility of disqualification. We believe that the fine is the least important of the three, and that a much more frequent use of the power to disqualify, even for short periods of a month or two, would have a far greater effect than fines. Naturally the period of disqualification should vary according to the circumstances of the offenders, just as fines are supposed to take account of their means. A man who drives only for pleasure should incur a much longer period than one who uses a car for his living. The resources of public transport are such that there would be few cases in which a short period of disqualification would do more than subject the offender to very serious inconvenience and loss of leisure. We see no reason why magistrates are reluctant to use their powers, although we oppose the suggestion, which has been brought up at intervals over a long period, that special traffic courts should be established.

Intention to Create Legal Relations

As Atkin, L.J., found in the well-known case of *Balfour* v. *Balfour* [1919] 2 K.B. 571, it is the natural and inevitable result of the relationship of husband and wife that the two spouses should make arrangements between themselves. However, "those agreements, or many of them, do not result in contracts at all, and they do not result in contracts even though there may be what as between other parties would constitute consideration for the agreement . . . they are not contracts because the parties did not intend that they should be attended by legal consequences." These words were considered by the Supreme Court of Victoria in *Popiw* v. *Popiw* [1959] V.L.R. 197. A husband promised his wife that if she would return to cohabitation with him he would transfer the title to the matrimonial home to their joint names. Hudson, J., held that the promise made by the husband was made by him with the intention of creating legal rights and obligations and that the promise by the wife to resume cohabitation with her husband was, in the circumstances, sufficient consideration for the husband's promise. His lordship thought that the nature of the act to be done and the promise given considered in the light of the circumstances served to take the case out of the category of agreements and arrangements between husband and wife referred to by Atkin, L.J., in *Balfour* v. *Balfour*, *supra*.

Licences for Hovercraft ?

An air correspondent of the *Daily Telegraph* has pointed out the nice legal problems set by the successful development of hovercraft by the Saunders-Roe Aircraft Company. The hovercraft makes a cushion of air for its support and movement above the surface of ground or water; the air cushion is generated by an engine-driven fan. The air correspondent's ingenious argument is that as a hovercraft is not airborne in the same way as an airplane, it is not covered by the Air Navigation Order and Regulations; it has no wheels touching a road surface and so is not mechanically propelled in the sense of a motor vehicle; finally, it is not a ship because when over water no part of it touches the surface. These points deserve the immediate comments that the Society of British Aircraft Constructors is permitting exhibition of a hovercraft at Farnborough in September; that possession of wheels is not essential for a vehicle to be mechanically propelled; and that a hovercraft can float and be towed. However, a new kind of craft has arrived and special provisions for licensing it and its drivers may well have to be made. Meanwhile we are puzzled to find a suitable generic term; "amphibious airship" seems a correct description, though perhaps too long for practical use. Have readers any suggestions ?

NO "VICARIOUS IMMUNITY" FOR TORTS?

IN a masterly judgment, in *Midland Silicones, Ltd.* v. *Scruttons, Ltd.* [1959] 2 W.L.R. 761; p. 415, *ante*, Diplock, J., disposed of the notion that by a contract between two parties under which one of them was exempt from certain liabilities, a third party, not party to that contract, could also claim the exemption.

There are *dicta* by Denning, L.J., in a number of cases which lend support to that view, but they are subjected by Diplock, J., to close scrutiny and shown not to be founded on authority and to be contrary to other authority. This is done with some suggestion of sympathy with the view rejected, the applicable rule being described in one passage as "no doubt old-fashioned"; and in another passage a reference to the principles which prevent adoption of the desired rules has injected into it the phrase "regret them though some may."

None the less the rule ultimately arrived at is the same as that adopted in 1956 by the High Court of Australia (*Wilson* v. *Darling Island Stevedore & Lighterage Co., Ltd.* [1956] 1 Lloyds Rep. 346) and very recently by the United States Supreme Court (in *Robert C. Herd & Co.* v. *Krawill Machinery Corporation* (1959), not yet reported).

The facts

The case arose out of damage to a drum of chemicals shipped from New York to London. The Dow Corning Corporation of New York shipped the drum to the plaintiffs on the s.s. *American Reporter*, of which the United States Lines was the owner and was acting as carrier of the goods. The defendants acted as stevedores to the United States Lines for unloading its vessels in London and there was, in fact, a stevedoring contract between the United States Lines and the defendants, entered into in 1952, but this was not known to the other parties. When the drum arrived at the Royal Victoria Dock the plaintiffs had not obtained clearance for it, and consequently after being unloaded the drum was stored in a transit shed hired by United States Lines. When clearance had been obtained the plaintiffs contracted with a road transport carrier to collect the drum. As it was being lowered on to the lorry by the defendants it was negligently allowed to drop and part of the contents (valued at £593) was lost. The act of lowering the plaintiffs' drum on to the lorry was (1) an act which fell within the scope of the defendants' servants' employment by the defendants; (2) an act which, by the terms of their contract with the United States Lines, the defendants had contracted with the United States Lines to do; and (3) an act which, by the terms of the bill of lading and the events which happened, United States Lines had contracted with the plaintiffs to do.

The exemption clauses

The essential point of the case, which was brought as a test case, was whether certain provisions restricting liability for damages, contained or referred to in the bill of lading, operated to exempt the stevedores. The bill of lading was expressed to govern the relations between the shipper, consignee, and the carrier, master and ship, but there was no mention of stevedores. The provisions of the United States Carriage of Goods by Sea Act, 1936, were incorporated in the bill of lading, and this Act contains a provision limiting the liability of the carrier and the ship to $500 per package unless a declaration of value is made. No declaration of value was made in this case. The Act does not define *carrier*. In the bill of lading *carrier* was stated to include the ship, her owners, operator and demise charterer, and also any time charterer "or person, to the extent bound by this bill of lading, whether acting as carrier or bailee." This also does not include stevedores unless they can be shown to be bound by the bill of lading by some other principle of law.

In view of the above, Diplock, J., held that the words of the Act and of the bill of lading did not extend to include stevedores engaged by the carrier, and on their true construction did not purport to govern the relations between the shipper or consignee on the one hand and the stevedores on the other hand. Consequently the limitation of liability which the stevedores sought to claim was contained in a contract which they did not execute and which did not purport expressly to be made on their behalf. In view of the well-known principle of *Dunlop Pneumatic Tyre Co., Ltd.* v. *Selfridge & Co., Ltd.* [1915] A.C. 847 to the effect that a stranger to a contract cannot sue on it, and of the related principle that where a contract is not under seal the promisee must have given consideration to the promisor, the benefit claimed by the stevedores could not be allowed unless some applicable exception could be admitted to circumvent those rules.

Situations outside the *Dunlop* v. *Selfridge* rule

An argument was put forward to the effect that United States Lines might be regarded as agents for the stevedores, the latter being undisclosed principals, but the difficulty in that contention is to know which of the clauses in the bill of lading were entered into by United States Lines as agents for the stevedores and which on their own behalf. Diplock, J., considered it impossible to hold that the defendants were in contractual relationship with the plaintiffs on such an agency basis. Nor could one apply the rules under which a benefit under a contract can be enforced by assignment or under a trust (the case of *Les Affréteurs Rénnis Société Anonyme* v. *Leopold Walford (London), Ltd.* [1919] A.C. 801 was not referred to).

A special exception

The defendants brought forward another, and this appears to have been their main, argument. It was expressed in the following way by Scrutton, L.J., in *Mersey Shipping and Transport Co., Ltd.* v. *Rea, Ltd.* (1925), 21 Ll. L. Rep. 375: "Where there is a contract which contains an exemption clause, the servants or agents who act under that contract have the benefit of the exemption clause. They cannot [*sic*] be sued in tort as independent people, but they can claim the protection of the contract made with their employers on whose behalf they are acting."

It was admitted that this particular passage was *obiter*, but it was proffered as a rule obtainable from the decision of the House of Lords in *Elder, Dempster* v. *Paterson, Zochonis & Co.* [1924] A.C. 522. His lordship did not accept that it accurately stated the *ratio decidendi* of the majority of the House of Lords. The judgments have been carefully considered in this country in the case of *Adler* v. *Dickson* [1955] 1 Q.B. 158, and in Australia in the case previously referred to, but with different results. Diplock, J., therefore felt that he should briefly give his own analysis. His lordship found four bases for the decision: (1) that on the special facts the defendants in the case were parties to the contract containing

the exemption clause, the signatory being regarded as their agent (this his lordship called " the express contract " theory); (2) that a contract could be implied, when the goods were handed to the defendants, that they should be carried on the same terms as the terms of the bill of lading although the defendants were not expressly a party thereto (the " implied contract " theory); (3) that the person who was in fact negligent was not acting as agent for the defendants so as to make them vicariously liable for his negligence; (4) the " vicarious immunity " theory which was the interpretation which Scrutton, L.J., made and expressed in the quoted passage. Counting heads, his lordship found that of the five law lords who gave their views only two accepted the vicarious immunity theory. Several were prepared to accept more than one theory and four approved the implied contract theory, whilst three as second choice accepted the " master not the servant of the shipowners " theory (number (3) above), and three were prepared to accept the express contract theory.

His lordship rounds off this analysis with the following: " I respectfully agree with Jenkins and Morris, L.JJ., in *Adler* v. *Dickson* and with Fullager, J., and Kitto, J., in *Wilson* v. *Darling Island Stevedore & Lighterage Co., Ltd.*, and with the Supreme Court of the United States that the *Elder Dempster* case is no authority for the principle of vicarious immunity from liability for torts and that Scrutton, L.J., incorrectly stated its effect."

Further submissions

That did not dispose of the matter, because, first, the implied contract theory was pressed into service, and, secondly, attention was drawn to some statements of Denning, L.J., laying down that third parties can enforce benefits under a contract. So far as the implied contract theory was concerned, his lordship did not think that the plaintiffs ever invited the defendants to do anything to the plaintiffs' goods so as to operate this theory. The plaintiffs were told by United States Lines to apply to the defendants for the goods. The plaintiffs did so. But it was the United States Lines that told the defendants to handle the plaintiffs' goods, not the plaintiffs themselves.

So far as Denning, L.J.'s principle is concerned, it first appears in *Smith and Snipes Hall Farm, Ltd.* v. *River Douglas Catchment Board* [1949] 2 K.B. 500. The rule suggests that a person not a party to a contract may, where the contract would benefit him if performed, enforce it " provided that it was made for his benefit and he has sufficient interest to entitle him to enforce it." " Sufficient interest " is not, in that case, fully explained, though some examples are given, most of which were not novel but covered the well-known exceptions of covenants running with the land, and the like.

Basis for Lord Denning's *dictum*

Studying the authorities quoted in support, Diplock, J., concluded that they did not lay down the principle ascribed to them, except perhaps one of them, a seventeenth century case, but that was based on natural love and affection as consideration, which was rejected in 1861 in *Tweddle* v. *Atkinson* (1861), 1 B. & S. 393.

Later, in *White* v. *John Warwick & Co., Ltd.* [1953] 1 W.L.R. 1285, Denning, L.J., referred to the *Elder Dempster* case as an example of the principle in the *Snipes Hall* case, and said that that case laid down that " when a party to a contract has deliberately in plain words agreed to exempt a third party from negligence, intending that the third party should have the benefit of the exemption, he cannot go back on his plighted word and disregard the exemption."

Commenting on this, Diplock, J., said: " If one disregards the adverb and adjectives, which were, I think, intended to convey moral overtones rather than to qualify the legal principle, which appears to state the broad proposition that where a person has entered into a contract with another, intending to benefit a third person who is not a party to that contract and has expressed that intention in the contract, that third person can sue him on the contract to enforce the benefit, I do not think, for the reasons that I have already given, the *Elder Dempster* case decided any such thing, which seems to me, with respect, to be even wider than the general principle as enunciated by the lord justice in the *Snipes Hall* case."

We need not set out the full and careful study of the various cases in which Denning, L.J., advanced the principle as a proposition of law: suffice to say that the " principle " is found by Diplock, J., to be insufficiently supported by authority and in conflict with *Dunlop* v. *Selfridge*. In differing from Scrutton and Denning, L.JJ., his lordship was able to point to the support derived from the Australian and United States decisions already mentioned.

A difficult problem

The attack made by Lord Denning on the rule in *Dunlop* v. *Selfridge* shows, particularly in view of its absence of real authority in support, that some are desirous of overthrowing the rule under certain conditions. In some States in America the rule has been overthrown and it is therefore of special interest to know that, in its application to the circumstances of the instant case, United States law should be the same as English law.

The difficulty in the way of departing from the existing rule is that it pushes the sphere of contract into the sphere of property: for if a third party has a *right* under a contract, that contract cannot be rescinded by the parties to it even if they wish to; it has become a piece of property belonging to that extent to the third party. There must be methods of dealing with such a situation—American law will show us no doubt what they are—and so long as we appreciate that an abandonment of the present rule is not as simple as it looks, reform of the law in this direction would be worthy of further study.

L. W. M.

Honours and Appointments

Mr. JOHN MERVYN GUTHRIE GRIFFITH-JONES, M.C., has been appointed Recorder of the City of Coventry.

His honour JUDGE ROWE HARDING has been appointed Judge for the districts of the Bargoed and the Blackwood, Tredegar and Abertillery County Courts in addition to the districts for which he is now Judge. He succeeds his honour Judge Temple-Morris, Q.C., with effect from 1st October, 1959.

Mr. JOHN FREDERICK EUSTACE STEPHENSON has been appointed Recorder of the City of Winchester.

Mr. PAUL STORR, Assistant Registrar, has been appointed Registrar of Doncaster, East Retford, Rotherham and Thorne County Courts and District Registrar in the District Registry of the High Court of Justice in Doncaster in succession to Mr. Archibald Loy who retired on 31st May.

Tax Planning in Perspective

THE NEW BOSTON TEA PARTY—IV

LIFE INSURANCE AND PENSIONS

In the last two articles we have been looking at types of settlement which can achieve very considerable savings of tax and estate duty. Settlements like this are the hobby of a wealthy man, and do not interest the more ordinary family with no spare capital to settle. We are now coming to the problem of provision for the future, and this is a question that concerns the man on the Clapham omnibus just as much as the man on the "Brighton Belle." In fact, there are additional obstacles placed in the way of planning on the "Brighton Belle."

For a man in Mr. Jones' position there are three main ways of providing for the future, and we shall have to compare the advantages and disadvantages of these three ways, not all of which can be used at once.

1. *Top hat scheme*

To a business man with a family company, the obvious solution is to arrange for the company to bear the cost of his pension. Unfortunately, this is an objective beset with statutory difficulties. Any pension or lump sum provided by a body corporate for a director or employee on retirement from service is a retirement benefit within s. 386 of the Income Tax Act, 1952, and by that section the cost to the company of providing the retirement benefit is deemed to be the income of the director or employee, year by year, and taxed upon him accordingly. Once arrangements have been made for the benefit, it does not matter whether the company pays premiums to an insurance office or acts as its own insurer; in the second case the director or employee is taxed on the premium which the company would have paid if it *had* insured.

To avoid this penalty it is necessary to obtain the approval of the Commissioners of Inland Revenue and a scheme approved for top people has come to be known as a top hat scheme. One of the conditions of approval of a top hat scheme is that no service rendered by a controlling director must be taken into account, and where the company is controlled by the directors as a whole, a controlling director means nothing more than one entitled to at least 5 per cent. of the ordinary shares. Now Mr. Jones has been a controlling director ever since he joined the company, and although he is about to remedy this by parting with his shares, only his future service can count towards an approved retirement benefit. The maximum pension which could be approved would be one-sixtieth of his final salary for every year's service commencing from the present time. Even if he works until he is seventy and is then drawing a salary of £4,000 the pension would only be £1,130 per annum.

It is clear that a top hat scheme is not the answer to Mr. Jones' problem.

2. *Retirement annuity under Finance Act*, 1956

Section 22 of the 1956 Act, so well known to solicitors, was designed to help non-pensionable directors as well as professional men, and it will help Mr. Jones over the stigma of his years as controlling director.

Under the section, premiums on an approved annuity contract obtain full income tax and surtax relief. The premium is limited to a certain percentage of earnings, but as Mr. Jones was born before 1908 he can claim the maximum percentage, which is fifteen. Assuming that his earnings from the Barset Printing Co., Ltd., average £4,000 per annum in future, the annual premium eligible for relief will be £600; he must pay the premium himself, because the Act gives no relief for premiums paid by the company.

Insurance companies offer a variety of schemes under the Act, but all must comply with certain conditions, of which the principal are that the annuity must be non-commutable and non-assignable, and that it must commence between the ages of sixty and seventy. The following are examples of schemes offered by one company:—

(*a*) At the age of fifty-two, Mr. Jones, for an an premium of £600, can obtain an annuity of £1,518 commencing at the age of seventy and guaranteed for five years. If he dies before the age of seventy, his estate is entitled to return of 95 per cent. of the premiums paid with interest at 4 per cent.

(*b*) For the same premium he can obtain a smaller annuity of £1,296 at the age of seventy, but if he dies before then, instead of return of premiums his widow will receive an annuity of £648 for her life.

In either case, Mr. Jones on reaching pension age can accept a smaller annuity for himself, in consideration of a reversionary annuity for Mrs. Jones after his death.

3. *Endowment assurance*

The alternative to a retirement annuity under s. 22 is for Mr. Jones to take out an ordinary life endowment assurance. If he survives the maturity date he can draw the proceeds and use them to purchase an annuity.

Again, Mr. Jones must pay the premiums himself, but the real disadvantage is that he would only obtain relief from tax within the limits of s. 219 of the Income Tax Act, 1952. This section applies to a policy securing a lump sum on death, which includes an endowment policy. The relief is two-fifths of the standard rate of income tax on the amount of the premium, without loss of earned income relief, but there is no allowance at all against surtax. There are also two ceilings which restrict the income tax relief to premiums not exceeding one-sixth of the payer's total income, and not exceeding 7 per cent. of the lump sum payable on his death. The reason why Mr. Jones would have to take out an endowment assurance, and then spend the endowment on an annuity, is that s. 219 gives no relief if premiums are paid to secure a deferred annuity in the first place.

By s. 27 of the Finance Act, 1956, the capital element in a *purchased* annuity is completely free of tax, making this method of providing an annuity more attractive than it used to be. For some mathematical reason quite beyond our grasp, the capital element in a purchased annuity is roughly a percentage of the annuity equal to the age of the annuitant at the time of purchase. If Mr. Jones purchased his annuity when he was seventy, then approximately 70 per cent. would be free of tax.

It so happens that the *gross* premium Mr. Jones would have to pay for a retirement annuity under s. 22 is about the same as the premium for an endowment maturing at the age of

seventy, out of which he could proceed to purchase an annuity of the same amount allowing for the exemption from tax of the capital element. The *net* cost of the premium to him would be very different :—

Under Finance Act, 1956, s. 22	£	£
Gross premium		600
Less : Income tax at 7s. 9d. after allowing for earned income relief	181	
Surtax at average rate of 5s. ..	150	
		331
Net cost		£269
By endowment assurance		£
Gross premium		600
Less : Income tax on £240 at 7s. 9d.		93
Net cost		£507

Although the benefits obtained from retirement annuities are not in all respects comparable with an endowment assurance, the treatment of the premiums for tax must be a decisive factor for Mr. Jones. We advise him to make the maximum provision by a contract approved under s. 22, and to supplement this, so far as he thinks necessary, by life endowment assurance. If his approved annuity contract includes repayment of premiums on death before pension age, it can very usefully be combined with a diminishing life cover. Diminishing life policies are always cheap, and the cover can be arranged so that, on death before pension age, the combined life insurance and return of annuity premiums would be a constant figure, whatever the date of death.

One thing we cannot do is to combine an approved annuity contract with a top hat scheme, because earnings from pensionable employment are not available for relief under s. 22 of the Finance Act, 1956.

(To be continued)

PHILIP LAWTON.

A Conveyancer's Diary

OWNERSHIP OF QUASI-MATRIMONIAL HOME

IF on a purchase of property by one of the parties to a marriage it is found that both parties have contributed towards the provision of the purchase price then, however unequal the contributions may have been, the presumption arises that the beneficial ownership of the property is in the two parties jointly and equally. This principle is now well established, the most elaborate discussion of it being found in *Rimmer* v. *Rimmer* [1953] 1 Q.B. 63. Various attempts have been made to rationalise the principle. In *Newgross* v. *Newgross* (unreported, but referred to in *Rimmer* v. *Rimmer*) Bucknill, L.J., referred to it as " Palm Tree Justice," that is to say, the kind of justice " which makes orders which appear to be fair and just in the special circumstances of the case." It has been referred to as an example of the application of the maxim that " equality is equity " or " equity did delight in equality," a maxim which is applied not only between spouses, but also between strangers who are found to be entitled to property in shares where the precise quantification of the shares is for any reason impossible (*Re Dickens* ; *Dickens* v. *Hawkesley* [1935] Ch. 267, the case on the dispute about the title to the royalties of Dickens' Life of Christ). This principle was described by Vaisey, J., in *Jones* v. *Maynard* [1951] Ch. 572, as Plato's definition of equality as a " sort of justice."

In *Diwell* v. *Farnes* [1959] 1 W.L.R. 627 ; p. 431, *ante*, an attempt was made to equate, for this purpose, the position of a mistress and the man with whom she was living with that of husband and wife. It was unsuccessful. The facts of the case were very complicated in detail, but a simple illustration may be given to explain the argument and the decision. During an association between a man and a woman not his wife, a house is purchased as a home and it is conveyed to the man alone, he thus becoming the sole owner at law. The whole of the purchase price is provided by a building society mortgage (this is a possibility : it happened in *Diwell* v. *Farnes*). A number of instalments comprising, as is usual, repayments of principal and payments of interest are paid under the mortgage, all of them by the woman out of her own moneys. The house is then sold. Assuming that there is no difficulty in establishing exactly what she paid to the building society, it is clear that the woman has some enforceable interest beneficially in the proceeds of sale, but what is that interest ? Is it (*a*) an equal share, or (*b*) an interest bearing the same proportion to the total proceeds of sale as her contributions bore to the total purchase price, or (*c*) a right to be subrogated to the security to the extent of her contributions only ? In *Diwell* v. *Farnes* the Court of Appeal by a majority rejected both (*a*) and (*c*) as possible solutions and held the defendant (the mistress) to be entitled to a proportionate interest in the proceeds of sale of the house. The majority (Hodson and Ormerod, L.JJ.) were careful to say that they were deciding only the case before them on its own facts, but in rejecting the applicability of the general principle which was urged on them under (*a*) they came, as it seems to me, very near to saying that as a general rule, i.e., unless special circumstances exist to displace it, a party to an irregular association is, in a case such as this, entitled to an interest in the property proportionate to his or her contributions to its purchase.

If this is a correct analysis of the judgments of the majority in this case, what kind of circumstances can be established to displace the application of the general rule ? Compelling evidence of an intention on the part of each party that the purchase was a joint venture ? (The dissenting member of the court, Willmer, L.J., held that such evidence existed in *Diwell* v. *Farnes ;* so did the deputy county court judge, whose decision was reversed on the majority view.) If so, then persons entering into a transaction of this character would be well advised to record their intentions. But here there may be a difficulty. The basis of the deputy county court judge's decision was his finding that at all material times the parties contemplated and intended a joint transaction or joint venture. Of this finding, Ormerod, L.J., said that even if there were sufficient evidence from which a joint transaction or a joint venture might be inferred, and in his view there was not, " such joint venture must depend on a contract express or implied between the parties which, being founded on an immoral consideration, would not be enforceable."

Establishing the rights of the parties

The difficulty in establishing the relative rights of the parties in cases such as this is usually that there is no evidence, or no sufficient evidence, of any particular intention on the part of the parties. That is why, in the case of property to the acquisition of which spouses have contributed, the "equality is equity" principle has been so often applied, and in *Diwell* v. *Farnes* the majority of the Court of Appeal found no evidence to justify the conclusion of the deputy county court judge that a joint transaction had been intended. This difficulty (the lack of evidence in most cases) can be got over by recording an intention to own the property jointly. But, if the observations of Ormerod, L.J., which I have just quoted, are well founded, this will not assist the party who, being dissatisfied with a proportionate share, claims an equal share and supports his or her claim by evidence (i.e., sufficient evidence) of an intention of joint and equal beneficial ownership; such evidence will not, on this footing, be received, and the party will be left with the general rule which (I have suggested) has been established by the majority view in this case.

In the first place, however, these observations appear to be *obiter*. They follow a clear conclusion that there was no evidence to support a finding of an intention to enter into a joint transaction, and they would only be relevant to the decision if such an intention had been established. Even so, they appear to me to be open to this objection: an agreement that a man and a woman shall live together, for which the consideration, so far as the woman is concerned, is that the man will maintain her while they live together, is no doubt founded upon an immoral consideration. But an agreement between persons who are already living together that they should acquire property jointly does not appear to be tainted in this way, for the consideration on either side is not the other party's agreement to live together but merely an agreement to provide a share of the purchase price. No immorality enters into the bargain, which is concerned purely with rights and obligations affecting property.

Relevance of immoral association between parties

However, if it should ever occur to persons in the position of the defendant and her paramour in *Diwell* v. *Farnes* to make a formal record of an intention that an item of property should be held in equal shares beneficially, they will presumably seek legal advice, and to be on the safe side the advice to be given to such persons must take into account the possibility that the transaction which they contemplate may be infected by the immorality of the association between them. But that need not be an insuperable obstacle to the parties' desires. The observations of Ormerod, L.J., were concerned with a rule of the law of contract. The transaction which the parties desire can be carried out without recourse to contract, by a conveyance of the property in question to the parties either as joint tenants or as tenants in common (i.e., in the latter case, upon the statutory trusts). The beneficial rights of the parties will then be regulated by rules of equity, that is to say, by the rules which were applied by the Court of Appeal in *Diwell* v. *Farnes* when they held the defendant to be entitled to an equitable interest in the property proportionate to her contributions to its acquisition; but the result of the application of these rules will be guided by the express terms of the conveyance of the property. The nature of the association between the parties, whether it is an immoral one or not, whatever its importance in determining the contractual rights of the parties, does not enter as a factor into any question of the effect of a purely conveyancing transaction between the parties.

"A B C"

Landlord and Tenant Notebook

IMPLIED COVENANT FOR TITLE

If *A* sells *B* a car and it is found that the car was never *A's*, *B* has a valid claim for damages. In *Rowland* v. *Divall* [1923] 2 K.B. 500 (C.A.), the buyer of a stolen car recovered the price paid (£334) from the seller, though he had had the use of the car for some months before selling it to another party for £400 (which he had refunded). Though reference was made to the Sale of Goods Act, 1893, s. 12, the ground of the decision was failure of consideration: "there can," Atkin, L.J., said, "be no sale at all of goods which the seller has no right to sell." In *Karflex, Ltd.* v. *Poole* [1933] 2 K.B. 251, hire-purchase dealers who had bought a stolen car and hired it to the defendant under a hire-purchase agreement, recovering it on his default in the first instalment, were held liable to repay the "deposit"; the question whether, if he had had the car some time and paid a number of instalments, he would be entitled to recover them was mooted but treated as one to be decided when the time came.

Suppose now that *A* lets *B* a garage which he, *A*, had no right to let, what remedies has *B*? Land is not larcenable. But it may be "let" by one who has no interest in it whatever, or who, having such an interest, has no right to let it.

Attention has recently been drawn to the position of grantees of leases by the alteration in the National Conditions of Sale, which were the subject of an article in our issue of 29th May (p. 421, *ante*), the contributor pointing out, *inter alia*, that the operation of the Law of Property Act, 1925, s. 44 (2), may lead to the acquisition of a worthless leasehold, and referring to the efforts of the Council of The Law Society to secure amendment. Also, one of the issues in *Rhyl Urban District Council* v. *Rhyl Amusements, Ltd.* [1959] 1 W.L.R. 465; p. 327, *ante*, was whether the defendants had a valid (counter) claim for damages for failure to obtain the necessary consent to the grant of the lease. The Notebook did not discuss this point when dealing with the main issues (pp. 406 and 424, *ante*), because Harman, J., held that if there were such a right the claim was statute-barred; but the learned judge did make brief mention of two of the authorities in point. Though the point will not affect the position of a tenant not holding under a lease under seal, it is of some interest.

Grant *ultra vires*

In accordance with well-established principles, the leases granted to the defendant in *Rhyl Urban District Council* v. *Rhyl Amusements, Ltd.*, without the prior consent of the Local Government Board or Ministry of Health took effect as yearly tenancies. The most recent grant had been that of

a thirty-one years' term, made in 1932, agreed to on the surrender of a previous lease; and the defendants now contended that the plaintiffs had broken their promise to grant a valid and effectual lease for thirty-one years by not obtaining or attempting to obtain the required ministerial consent.

The two authorities referred to were *Corporation of Canterbury* v. *Cooper* (1908), 99 L.T. 612; (1909), 100 L.T. 597 (C.A.), and *Pacific Coast Coal Mines, Ltd.* v. *Arbuthnot* [1917] A.C. 607, and neither is conclusive. The second mentioned decision, a Privy Council one, arose out of an agreement made *ultra vires*, subsequently validated by the British Columbia legislature by means of a private Act subject to adoption by special resolution passed by 75 per cent. of shareholders present. A special resolution had been carried, but the notices convening the meeting had been defective. It was held that, despite four years' acquiescence, the agreement and all acts done in it were *ultra vires*: the persons dealing with the corporation were bound to ascertain whether the condition had been fulfilled.

Corporation of Canterbury v. *Cooper* is nearer home and more closely connected with our subject. The defendant had, in 1887, purchased the residue of a 300 years' lease granted by the plaintiffs in 1599. In 1891 the rent of 8d. a year had not been paid for over a century. The plaintiffs brought an action for arrears which was compromised by an agreement to accept a surrender and to grant the defendant a lease for life at no rent but under which she was to do some repairs. It was, apparently, not expected that she would live very long. But, the lease having been granted, she was alive and in possession in 1908, and when pressed to do some whitewashing, she or her advisers found that the plaintiffs had not obtained the required consent of the Local Government Board (Municipal Corporations Act, 1882, s 106, as amended by the Local Government Act, 1888, s. 72).

She thereupon claimed a squatter's title. The circumstances would hardly have supported a contention that the void lease had taken effect as a yearly tenancy (see *Roe d. Brune* v. *Prideaux* (1808), 10 East 158—disparity between rent payable and value), but the claim to the freehold failed because the period ran from 1899 when the old lease had expired, the "surrender" having been ineffective. Channell, J., clearly felt much sympathy for the defendant (in the Court of Appeal, where his judgment, upholding that of a county court judge, was itself upheld, Farwell, L.J., said: "the lady has brought it upon herself"). But his observations, part of which were cited by Harman, J., in *Rhyl Urban District Council* v. *Rhyl Amusements, Ltd.*, do not suggest that he went at all deeply into the question; at some points at all events, he seemed more sure that the defendant would have had a claim for damages than at others. "There was a binding compromise; that binding compromise may have included a contract by the corporation, and I think it did, to grant her an effectual new lease for life, and it would have been effectual if they had obtained the consent of the Local Government Board. Therefore, there may have been a contract to procure the consent of the Local Government Board, just as a contract to assign a lease includes the consent of the lessor where that is wanted. It is similar to that. Therefore her complaint, if any, is that she has not got this valid lease, and that there was a contract to give it to her. She may or may not make out that there was such a contract. I offer no opinion on it. She ought to have claimed damages for not getting the valid lease which she expected to get, and which possibly they contracted to give her. But she has not done that."

While Harman, J., confessed that he preferred "the view of Channell, J.", to that of Lord Haldane (in *Pacific Coast Gold Mines, Ltd.* v. *Arbuthnot*), the observations may be said to ignore the fact that the Local Government Act, 1888, s. 72, is available to everybody, or at all events an intending sub-tenant, while a purchaser may not know whether there is a restriction on alienation; nor is consideration given to the question whether a contract to grant a lease which is not enforceable can give rise to a claim for damages. But there are authorities in point.

Implied covenant

Three authorities can be said to give us the main principle of the law. In *Gwillim* v. *Stone* (1811), 3 Taunt. 433, while the actual decision was in effect that there had not been a complete agreement to grant a lease, Mansfield, C.J., took it as settled law that such an agreement is an agreement to grant a valid lease. In *Roper* v. *Coombes* (1827), 6 B. & C. 534, an intending tenant recovered a deposit when it was found that the intended landlord could not grant the agreed lease, the court refusing to distinguish between such an agreement and an agreement to take an assignment of a lease. And in *Stranks* v. *St. John* (1867), L.R. 2 C.P. 376, Mansfield, C.J.'s statement in *Gwillim* v. *Stone* and the decision in *Roper* v. *Coombes* were accepted and applied in the case of an agreement for a seven years' term which was void as a lease but valid as an agreement.

Stranks v. *St. John* has undoubtedly come in for criticism. Its authority was recognised by Charles, J., in *Hoare* v. *Chambers* (1895), 11 T.L.R. 185; but in *Baynes & Co.* v. *Lloyd & Sons* [1895] 2 Q.B. 610 (C.A.), Kay, L.J., expressed the view that at the most an intending tenant would be entitled to recover expenses incurred in investigating title, and observed that *Stranks* v. *St. John* had been decided on demurrer. But I propose to discuss the matter of damages in a separate article.

Demise or agreement

For the main obstacle which confronts *B*, the imaginary tenant of a garage referred to in my second paragraph, is that the authorities show that no covenant for title will be implied in a demise by parol, and consequently that Channell, J.'s tentative conclusion and the approval expressed thereof by Harman, J., would not help *B* by putting him in a position analogous to that of a purchaser or hirer of a stolen car. He would be up against *Bandy* v. *Cartwright* (1853), 8 Exch. 913, in which it was held that a tenant under a parol agreement had no claim against his landlord when the grantor of a rent-charge levied distress on the tenant's goods. The position was gone into and older authorities discussed in *Baynes & Co.* v. *Lloyd & Sons* [1895] 2 Q.B. 610 (C.A.), which, while it may no longer be good law as regards the importance of using the word "demise," still supports the proposition that the mere relationship of landlord and tenant does not imply a covenant *for title*.

B, our hypothetical tenant of a garage let by parol, therefore appears to have no remedy in damages.

R. B.

The annual general meeting of the Bar will be held in the Middle Temple Hall, on Monday, 13th July, 1959, at 4.30 p.m. The Attorney-General will preside.

A POINT OF CASE LAW

In recent criminal proceedings, counsel for the defence objected to his opponent citing a decision of the Judicial Committee of the Privy Council. Asked by the magistrate why, he submitted that the decisions of the Judicial Committee were not founded upon the common law but upon "natural justice." To this startling proposition, counsel for the prosecution pointed out that the decisions of the Judicial Committee were cited in all the leading text-books and that would not be done if they were not regarded as being of equal value to the decisions of any other court in the land. "What I think you mean, Mr. ———," said the magistrate in over-ruling the objection, "is that very often the Judicial Committee is dealing with the law as its exists amongst some very primitive tribes and in such cases the Committee is sometimes compelled to decide a case on what it regards as 'natural justice' because no other law exists to guide them; but this is not so where the law concerned has been considered by the judges and is relevant to cases coming before our own courts."

The decision which gave rise to these exchanges was *Ibrahim* v. *R.* [1914] A.C. 599, and involved a point round which there has been a good deal of judicial comment upon questions of police procedure. In one form or another such questions must arise daily and yet strangely enough they are still not definitely settled. Has a police officer the right to question a prisoner once he is in custody? Mr. Justice Avory in *R.* v. *Winkel* (1912), 76 J.P. 191, said bluntly he had no right whatever. Lord Sumner in the *Ibrahim* case, on the other hand, said: "The English law is still unsettled, strange as it may seem, since the point is one that constantly occurs in criminal trials. Many judges in their discretion exclude such evidence, for they fear that nothing less than the exclusion of such statements can prevent improper questioning of prisoners by removing the inducement to resort to it. Others, less tender to the prisoner, or more mindful of the balance of decided authority, would admit such statements, nor would the Court of Criminal Appeal quash the conviction thereafter obtained if no substantial miscarriage of justice had occurred."

If Mr. Justice Avory's decision is the right one of the two, anyone familiar with the general practice of the criminal courts knows that the law in such circumstances is more honoured in the breach than in the observance. So many prosecutions stand or fall upon what the defendant has said either upon arrest or soon after whilst "detained" by the police and before he is formally charged. During this time he is often subjected to intense questioning which is eventually crystallised into a "voluntary statement." The justification for this practice—almost universal in all charges of any gravity—must be that it results in the conviction of many persons guilty of crimes who if they were stopped from speaking when first accosted by the police would never be convicted. Aggravating as it must be for an advocate to find that his client has given the show away before he has even appeared in court, it must be admitted that it is in the interests of us all that criminals should be caught and brought to justice. It is certain that a lot of them would escape if the police were compelled to follow Mr. Justice Avory's *dictum* religiously. Moreover, the ruling he gave so unequivocally in *R.* v. *Winkel* would seem to be in direct conflict with the Judges' Rules, the first three of which may be summarised by saying that the police may question a suspect, but when they make up their mind to charge him, he must be cautioned. Who can blame the police if they sometimes make up their mind at a very late stage of their questioning?

F. T. G.

HERE AND THERE

THE ANIMALS AND US

The time is rapidly approaching when all reflective animals must ask themselves whether it is worth their while to maintain the human connection. Hitherto the loss of freedom involved for those who accepted it has had clear compensating advantages. In primitive communities the chickens and the pigs mucked in with the family. If the family could stand it, so could they. I have seen in a Basque folk museum a model of a cottage with a device to allow the cattle in the byre to poke their heads through into the kitchen. It was something to do with the necessity of feeding them by hand during the winter months when fodder was scarce. But even without these personal intimacies, the cows and the sheep and the chickens have long been accustomed to a Welfare State provision for their maintenance and well-being. It is true that many of them may be called on to die prematurely for the benefit of mankind, but so may the soldiers of the Queen, and when did that ever deter men from embracing the normal privileged security of army life? The dog and the cat and (since the triumph of the internal combustion engine) the horse have not even had that disadvantage but have lived lives out in cultured ease. Even the creatures moving on the fringes of the human world, the foxes and the rabbits, have benefited by the contact in terms of well stocked chicken runs and laboriously cultivated vegetable gardens ready for raiding. A further step towards the admission of animals to full equality of status with human beings was taken when Miss Beatrix Potter, followed by other talented writers, introduced Peter Rabbit, Squirrel Nutkin, Mr. Jeremy Fisher and their friends into polite literature as securely as the human characters of Jane Austen or Charles Dickens.

COLOUR BAR IN FUR

But you cannot have privileges without responsibilities and the animal world is discovering two unpleasant corollaries of its hitherto mainly satisfactory involvement with mankind. In the first place, animals are being dragged along with human beings into the operations of the pitiless machine of scientific economic government. In the second place, they are becoming involved in the intricate acrimonies of human politics and prejudices. Suddenly they find themselves officially plunged in the controversies of the colour bar. In Alabama, you noticed recently, the public librarians have withdrawn from general circulation a dangerous work of fiction called "The Rabbits' Wedding," dangerous because the marriage was a mixed marriage between a black and a white rabbit. (The natural and probable result was that the publishers were deluged with orders.) Next the Three

Little Pigs who originally had so much trouble with the Big Bad Wolf now face even worse trouble with the Dude County Property Owners' Association in Florida who are asking the legislature to ban their story from the State's bookshelves. "This book is trying to brainwash American youngsters with a version which pictures a black pig as superior to a white pig. It is much worse than the rabbit story. At one time all three pigs were white. Then seven years ago the book began to appear with two coloured pigs in the trio. Now it has a white pig, a mulatto pig and a black one. It is the black pig which survives because it was smart enough to build its house of brick. The other two are eaten by the big bad wolf." Well, the animal world has been warned. If this spirit spreads to the world of horses, our dear old childhood classic "Black Beauty" will have to be rewritten as "White Beauty." Pure white nordic polar bears will declare a general war on black bears and brown bears including, of course, those insidious corruptors of the nursery, Teddy Bears.

THE INSIDIOUS RABBIT

BUT, quite apart from its unfortunate involvement in the colour bar controversy, the rabbit is coming in for an assortment of trouble through its contact with the human race. First, it has been the victim of attempted genocide by myxomatosis. Now there are those in the Ministry of Agriculture who are seriously anxious to direct against it a psychological warfare calculated to destroy the impression of good nature made on the impressionable by the enchanting characters of Peter Rabbit and Little Grey Rabbit. The idea has spread far and wide and the New Zealand government is taking steps to bar rabbits as pets. As a starting-point for the anti-rabbit propaganda it is a wonder no one has revived that little poem of the nineteen-twenties beginning :—

> "The rabbit has a charming face,
> Its private life is a disgrace.
> I really dare not name to you
> The awful things that rabbits do ;
> Things that your paper never prints—
> You only mention them in hints."

There has even been a hint of "iron curtain" trouble with the rabbit. Among the personnel of the Moscow State Circus at Wembley is the traditional conjuror's white rabbit. It is reported that an inspector from the Ministry of Agriculture called recently to examine it and anxiously demanded an assurance that it did not come from America. At that point the potential complexities of the rabbit situation become overwhelmingly bewildering. Iron curtain rabbits are invading Smithfield from China because of our own genocide-created shortage. More curious still is the Australian phenomenon of the invasion of the grazing lands of New South Wales by eight million kangaroos. It is conjectured that, as long as the rabbit was outgrowing the kangaroo there, the kangaroo was kept in check, but that the all too successful war against the rabbit has now removed the barrier to a general domination of the continent by the larger animal and an unlimited build-up of its numbers. We would do well to re-think our relations with the rabbit and the animal world in general before they see through us.

RICHARD ROE.

REVIEWS

Prideaux's Forms and Precedents in Conveyancing. Twenty-fifth Edition, in three volumes. Volume 2. Edited by T. K. WIGAN, Barrister-at-Law, and J. M. PHILLIPS, Barrister-at-Law. pp. lxxii and (with Index) 1,204. 1959. London : Stevens & Sons, Ltd., and The Solicitors' Law Stationery Society, Ltd. £6 6s. net.

"Prideaux" as an institution requires no general praise or introduction : this volume deals with leases and kindred documents (p. 336), mortgages (p. 414), bills of sale, bonds, arrangements with creditors and power of attorney (p. 138), partnerships (p. 80) and patents (p. 105).

The law of landlord and tenant has been greatly subject to statutory changes in the last few years and they have all been taken into account in both the statement of the law and in the precedents. The Landlord and Tenant (Notices) Regulations, 1957, are reproduced providing in themselves a large collection of the notices required under the 1954 Act.

Mortgages are not only dismal but also difficult documents and the practitioner will welcome a very full and comprehensive collection both of complete mortgages and of forms for inclusion therein.

It is never easy to produce a satisfactory collection of partnership precedents because in no two cases will requirements of the partners be the same : it is wise, therefore, as is done here, to concentrate upon clauses from which an agreement may be synthesised rather than upon partnership articles as such. There are five such articles including one between medical practitioners within the National Health Service. In the preface it is stated that "Precedents of partnership agreements drawn to avoid estate duty vary too much from case to case to be suitable for inclusion in a standard work, but attention has been drawn to the principal considerations"—in half a page of text. We sympathise, but this just is not good enough : a partnership agreement is not a settlement. Very often a client will be moved to settle property principally in order to minimise taxation liabilities : we agree that such documents are best left to specialist volumes. But a client does not enter into a partnership from that motive ; he enters into it to carry on his trade or profession, and if he turns to his solicitor, or if, being himself a solicitor, he turns to a book of precedents, for help as to the terms of his agreement he is entitled to expect a draft drawn so as to minimise and not maximise taxation liabilities.

The editor of the patent chapters states that those chapters have been largely re-written to take account of changes in commercial relationships and to bring them into line with current practice. The reviewer hopes that he will be excused if he admits that his knowledge of patents is such that he readily accepts the editor's word for it.

The tables of cases, statutes, contents, etc., are very full and the printing and setting-out very clear and legible : one wonders, however, whether a thinner paper might not have been found.

Formation of Private Companies. By DOUGLAS BARKER, M.A., LL.B. (Cantab.), LL.M. (Harvard), of the Inner Temple, Barrister-at-Law, and A. P. HALBERSTAM, M.A., LL.B. (Cantab.), Solicitor. pp. xvi and (with Index) 236. 1959. London : Sweet & Maxwell, Ltd. £1 15s. net.

The publishers do this attractive book no service when they describe it as a reliable guide to the specialist. It is not a book for a company specialist, and the authors themselves disclaim any such intention in their preface. For the general practitioner it would be a useful refresher course, and for the young solicitor taking up company work an excellent introduction.

The nature and types of company are described, with a helpful explanation of the exempt private company, which most text-books either dismiss in a few lines or define by setting out the almost unintelligible rules of the Seventh Schedule. There are also chapters on the advantages of incorporation, on taxation and

on death duties. Anyone attempting to explain the limits of directors' remuneration for profits tax merits sympathy, but unfortunately there is a misprint on p. 27 which makes confusion worse confounded.

The book contains a number of precedents: one of the most useful is the Agreement for Purchase of a Business by a Company, but the tax position now requires further consideration in the light of the decision in *Re Hollebone's Agreement* [1959] 2 W.L.R. 536; p. 349, *ante*. Thirty pages are devoted to reproducing Tables A to E of the First Schedule to the Companies Act, and there are also a number of common forms such as the Annual Return. It is difficult to see the purpose of setting out blank forms which are, in any case, difficult to recognise when incorporated in a book.

The production is of the high standard which we have come to expect of the publishers in this type of work, but it is a pity that a book whose preface is dated March, 1959, should contain references to the Finance Bill, 1958.

Digest of Law of Contract and Tort. By A. J. POLLARD. pp. xxi and (with Index) 330. 1959. London: B. T. Batsford, Ltd. £1 17s. 6d. net.

For the student, as for the practitioner, the field of contract and tort is covered by several well-established text-books and, for this reason, before examining its contents, it is necessary to say why this work was written.

The author's intention is to furnish the student with an introduction to the basic principles underlying the law of contract and tort in preparation for examinations such as those set by the Royal Institution of Chartered Surveyors, the Chartered Auctioneers' and Estate Agents' Institute, The Law Society or a university and to present principle and illustration in easily distinguishable form. In an effort to assist the student to obtain a "picture" of a particular topic and of the subjects as a whole the author has divided each topic into sections, and subsections, and, where necessary, even further divisions have been made.

Admittedly, the author's declared purpose is to give an introduction to basic principles, and, of course, such an introduction is of the greatest importance, but we would give this work a stronger recommendation if all references to some leading cases had not been omitted. For example, no mention is made of *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemists (Southern), Ltd.* [1953] 1 Q.B. 401, *Leaf* v. *International Galleries* [1950] 2 K.B. 86, *Long* v. *Lloyd* [1958] 1 W.L.R. 753, *Giles* v. *Walker* (1890), 24 Q.B.D. 656 and *Davey* v. *Harrow Corporation* [1958] 1 Q.B. 60. Surely these decisions are vital to a knowledge of the basic principles of contract and tort, or at least as important illustrations of these principles? Again, in discussing the effect of the Fatal Accidents Act, 1846, it is said that the claimants must prove a reasonable expectation of pecuniary advantage from the continuance of the life of the deceased but "against this may be set any insurance or national insurance money paid or payable on the death of the deceased." The Fatal Accidents (Damages) Act, 1908, and the Law Reform (Personal Injuries) Act, 1948, would seem to be relevant here, but no mention is made of them at this point.

However, in a work of this size, it would be wrong to expect a complete statement of the law of contract and tort. This volume is a digest of these subjects and the student will find much to assist him in the preparation for his examinations. The book contains a useful introduction entitled "Miscellaneous Aids to Reading" and it is completed by a table of statutes, a table of cases and an index.

Cases on the Law of Contract. Third Edition. By G. C. CHESHIRE, D.C.L., F.B.A., of Lincoln's Inn, Barrister-at-Law, and C. H. S. FIFOOT, M.A., F.B.A., of the Middle Temple, Barrister-at-Law. pp. xxiii and 459. 1959. London: Butterworth & Co. (Publishers), Ltd. £2 5s. net.

When it was first published, the authors said that this book was designed primarily to accompany their work on the Law of Contract and they hoped that it would be of more general use where the reports were not readily or permanently available. There seems to be a divergence of opinion as to the usefulness of case books, but there can be no doubt that many students have found this one to be of great value.

In this edition, the passing of the Law Reform (Enforcement of Contracts) Act, 1954, has prompted the authors to omit the section on unenforceable contracts. They considered it to be a disproportionate use of space to include cases on guarantees and they believe that illustrations of the operation of s. 40 of the Law of Property Act, 1925, should be left to case books (if any) on the law of land. As they say, the ultimate choice must be personal, but it seems a little strange to find a work of this kind on the law of contract which makes no mention of *Mountstephen* v. *Lakeman* (1871), L.R. 7 Q.B. 196, and contains neither *Maddison* v. *Alderson* (1883), 8 App. Cas. 467 nor *Rawlinson* v. *Ames* [1925] 1 Ch. 96.

The authors have introduced several recent cases, including the important decision in *Port Line, Ltd.* v. *Ben Line Steamers, Ltd.* [1958] 2 Q.B. 146, but we are pleased that they have resisted the temptation to embrace novelty for its own sake. Students of the law of contract would be well advised to use this work but we suspect that not all of them will choose to do so. The more's the pity.

Oyez Practice Notes No. 3: Adoption of Children. Fifth Edition. By J. F. JOSLING, Solicitor. pp. (with Index) 128. 1959. London: The Solicitors' Law Stationery Society, Ltd. 17s. 6d. net.

A minor revolution has occurred in recent years in the change in the attitude of society to children. Once valued mainly as the means of perpetuating property rights beyond the grave and as miniature projections of their parents' delightful personalities—any unpleasant characteristics being attributed to original sin or the operation of the devil rather than heredity—they are now regarded as assets in their own right. The demand for children to adopt has so far outrun the supply that the market in "unwanted" children could be as profitable as that in pedigree dogs if the law did not step in to prevent such traffic in human lives. Since 1926, when adoption was first recognised by the law in this country, the law regarding adoption has been modified several times and the Adoption Act, 1958, consolidated and replaced all earlier legislation. This handbook reviews the history of adoption in this country and gives a concise account of the law as it has stood since the 1958 Act came into operation on 1st April, 1959, including the new rules of court which came into force on the same date. There is a useful summary of the changes made by the new legislation and the whole of the law is set out clearly with reference to the leading cases. Procedure in the Chancery Division of the High Court, in the County Court and in the Juvenile Court is given in detail, with the appropriate forms, and there is a list of all the Adoption Societies whose registration is recorded in the Home Office. In short, this book covers exactly the ground required by the practitioner who is required to deal with adoption matters with increasing frequency and who therefore needs to have the up-to-date law in a form which makes reference speedy and simple. It is difficult to see how the scope and lay-out of this handbook could be improved.

Advocacy at Petty Sessions. Second Edition. By B. FRASER HARRISON, Solicitor. pp. xi and (with Index) 122. 1959. London: Sweet & Maxwell, Ltd. 15s. net.

The first edition of this book was published in 1956 and it was favourably received. It is a concise account of the steps to be taken by an advocate in preparing and conducting a case before magistrates; it also outlines the procedure in such courts in criminal and domestic cases and there is a chapter on appeals. There is another chapter on procedure in coroners' courts. We think that this book will be most useful to those for whom it is intended and we have only one criticism to offer. The book is necessarily short in order to keep it within reasonable limits, and Mr. Harrison has rightly given outlines only of procedure and evidence, etc. We would suggest, however, that references to articles in this and other periodicals discussing the particular subjects at greater length would be helpful to the user of the book.

COUNSEL'S FEES

The minimum fee for court brief cases as opposed to other cases under the new London Sessions agreement regarding prosecution fees is 7 guineas where there is a plea of guilty and 10 guineas for the simplest fight.

BOOKS RECEIVED

Oyez Practice Notes No. 35: Covenants, Settlements and Taxation. Second Edition. By G. B. GRAHAM, LL.B., of Lincoln's Inn, Barrister-at-Law. pp. 71. 1959. London: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

Brotherhood of Evil. The Mafia. By FREDERIC SONDERN, Jr. With a foreword by HARRY J. ANSLINGER. pp. xii and 243. 1959. London: Victor Gollancz, Ltd. £1 1s. net.

Trust Accounts. Second Edition. By PETER M. B. ROWLAND, B.A., LL.B., of Gray's Inn and the Midland Circuit, Barrister-at-Law. pp. xxiii and (with Index) 356. 1959. London: Butterworth & Co. (Publishers), Ltd. £2 net.

The Administration of Insolvent Estates in South Africa. Second Edition. By DAVID SHRAND, M.Com., A.S.A.A., C.A. (S.A.). pp. xxii and (with Index) 500. 1959. Cape Town: Juta & Co., Ltd. Agents in U.K.: Sweet and Maxwell, Ltd. £5 5s. net.

The Common Law Library No. 7: Bowstead on Agency. Twelfth Edition. By E. J. GRIEW, M.A., LL.B., of Gray's Inn, Barrister-at-Law. pp. lxxxviii and (with Index) 335. 1959. London: Sweet & Maxwell, Ltd. £3 10s. net.

Judicial Review of Administrative Action. By S. A. DE SMITH, M.A., Ph.D., pp. xlvii and (with Index) 486. 1959. London: Stevens & Sons, Ltd. New York: Oceana Publications, Inc. £3 10s. net.

The Principles of Company Law. By ROBERT R. PENNINGTON, LL.B., Solicitor. pp. xci and (with Index) 661. 1959. London: Butterworth & Co. (Publishers), Ltd. £2 10s. net.

Woodfall's Law of Landlord and Tenant. Fourth Cumulative Supplement (to 1st April, 1959) to the Twenty-fifth Edition and Permanent Supplements. By JOHN CLARK, B.A. (Oxon), of Gray's Inn, Barrister-at-Law. pp. 85. 1959. London: Sweet & Maxwell, Ltd. 8s. 6d. net.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

National Insurance Bill [H.C.] [10th June.
Statute Law Revision Bill [H.L.] [11th June.

To revise the Statute Law by repealing obsolete, spent, unnecessary or superseded enactments.

Read Second Time:—

Landlord and Tenant (Furniture and Fittings) Bill [H.C.] [11th June.
Portsmouth Corporation Bill [H.C.] [10th June.
Tees Valley and Cleveland Water Bill [H.C.] [10th June.

Read Third Time:—

Glasgow Corporation Order Confirmation (No. 2) Bill [H.C.] [11th June.
Licensing (Scotland) Bill [H.L.] [11th June.
Metropolitan Magistrates' Courts Bill [H.C.] [11th June.
Milford Haven (Tidal Barrage) Bill [H.L.] [9th June.
Weeds Bill [H.L.] [9th June.

In Committee:—

Criminal Justice Administration (Amendment) Bill [H.C.] [11th June.
Factories Bill [H.C.] [11th June.
Street Offences Bill [H.L.] [9th June.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Bootle Corporation Bill [H.L.] [9th June.
Falmouth Docks Bill [H.L.] [9th June.
National Galleries of Scotland Bill [H.C.] [9th June.
Pier and Harbour Provisional Order (Gloucester) Bill [H.C.] [10th June.
Pier and Harbour Provisional Order (Medway Lower Navigation) Bill [H.C.] [10th June.

Read Third Time:—

Middlesex County Council Bill [H.L.] [9th June.
Thames Conservancy Bill [H.L.] [8th June.

In Committee:—

Finance Bill [H.C.] [10th June.

B. QUESTIONS

CRIMINAL CHARGES (COSTS ON ACQUITTAL)

Mr. R. A. BUTLER said that the number of persons acquitted at courts of assize and quarter sessions in England and Wales in 1952 to 1958 were: 1952 (2,083); 1953 (1,886); 1954 (1,880); 1955 (1,740); 1956 (1,768); 1957 (2,090); and 1958 (2,398). The figures of the number of orders made under s. 1 (1) (*b*) of the Costs in Criminal Cases Act, 1952, were not available. [9th June.

HABEAS CORPUS

Mr. RENTON said that the Secretary of State for the Home Department was giving the subject of *habeas corpus* serious consideration, in consultation with the Lord Chancellor and the Attorney-General, with a view to legislation when an opportunity occurred. There were several subsidiary problems which must be considered before detailed proposals could be formulated. [11th June.

STATUTORY INSTRUMENTS

Draft **Coal Mines** (Clearance in Transport Roads) Regulations, 1959. 7d.

Coquet Water Board Order, 1959. (S.I. 1959 No. 940.) 1s. 8d.

General Optical Council Rules:—

(Companies Committee) Order of Council, 1959. (S.I. 1959 No. 955.) 5d.

(Education Committee) Order of Council, 1959. (S.I. 1959 No. 956.) 5d.

London Traffic (Parking Places) Consolidation (Amendment) Regulations, 1959. (S.I. 1959 No. 977.) 7d.

London Traffic (Prescribed Routes) Regulations:—

Carshalton (S.I. 1959 No. 973.) 5d.
Greenwich and Lewisham (S.I. 1959 No. 974.) 4d.
Hendon (S.I. 1959 No. 975.) 4d.

London Traffic (Prohibition of Cycling on Footpaths) (Otford, Kent), Regulations, 1959. (S.I. 1959 No. 976.) 5d.

Merchant Shipping (Life-Saving Appliances) (Amendment) Rules, 1959. (S.I. 1959 No. 978.) 5d.

Ploughing Grants Scheme, 1959. (S.I. 1959 No. 964.) 5d.

Public Health Officers (Port Health Districts) Regulations, 1959. (S.I. 1959 No. 963.) 7d.

Public Health Officers Regulations, 1959. (S.I. 1959 No. 962.) 8d.

Public Trustee (Fees) Order, 1959. (S.I. 1959 No. 961.) 5d.

This Order amends the Public Trustee (Fees) Order, 1957, by authorising the Public Trustee to charge fees on the sale or purchase of securities, land or mortgages and by making certain other changes in the Order.

Stopping up of Highways Orders:—
County Borough of Blackburn (No. 1). (S.I. 1959 No. 943.) 5d.
County Borough of Bootle (No. 2). (S.I. 1959 No. 944.) 5d.
County of Chester (No. 13). (S.I. 1959 No. 950.) 5d.
County of Derby (No. 10). (S.I. 1959 No. 945.) 5d.
County Borough of Hastings (No. 1). (S.I. 1959 No. 946.) 5d.
County of Kent (No. 11). (S.I. 1959 No. 947.) 5d.
County of Lancaster (No. 9). (S.I. 1959 No. 952.) 5d.
London (No. 12). (S.I. 1959 No. 954.) 5d.
Talke-Balterley Heath Trunk Road Order, 1959. (S.I. 1959 No. 951.) 5d.
Wages Regulation (Milk Distribution) (Scotland) (Amendment) Order, 1959. (S.I. 1959 No. 960.) 5d.

SELECTED APPOINTED DAYS

June

1st — Post-War Credit (Income Tax) Regulations, 1959. (S.I. 1959 No. 876.)

8th — Public Trustee (Fees) Order, 1959. (S.I. 1959 No. 961.)

11th — Merchandise Marks (Imported Goods) No. 1 Order, 1959. (S.I. 1959 No. 404.)

14th — House Purchase and Housing Act, 1959.
Housing (Underground Rooms) Act, 1959.
Restriction of Offensive Weapons Act, 1959.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

FACTORY: DEFINITION: APRON OF AIRFIELD

Walsh *v.* Allweather Mechanical Grouting Co., Ltd.

Lord Goddard, Romer and Pearce, L.JJ. 8th May, 1959

Appeal from Glyn-Jones, J.

The plaintiff was a ganger in charge of a group of men engaged on breaking up and relaying an area of concrete on the eastern apron of an airfield in the vicinity of a hangar used for testing and assembling aircraft. The defendants, who were the employers of the workmen, had contracted with the Air Ministry to do the work. The eastern apron was bounded by a security fence put up to prevent unauthorised spectators seeing what happened when 'planes were tested on the apron. As the plaintiff passed one of the workmen using a pneumatic drill, a fragment of flying concrete injured his eye. In his action for damages against the defendants for, *inter alia*, breach of the Protection of Eyes Regulations, 1938, in that they failed to supply him with goggles, it was conceded that the hangar was a factory for the purposes of the Factories Act, 1937. Glyn-Jones, J., held that the apron was not a factory within the Act of 1937 and the plaintiff appealed.

PEARCE, L.J., reading the judgment of the court, said that the appeal turned on whether the place where the accident happened was a " factory " within the meaning of the Factories Act, 1937. The defendants contended that the place of the accident was not within the close, curtilage or precincts of the factory within s. 151 (1) of the Factories Act, 1937. Alternatively, they argued that the provisions of s. 151 (6) applied to the circumstances of the case and thereby the place was deemed not to form part of the factory, although it would otherwise do so. The defendants contended that the apron was merely a part of the continuous and vast stretches of concrete that ran around and about the airfield. It had, of course, to be used by the aircraft company to bring their airplanes into and out of the hangar, but they had no exclusive occupation and their licence to use it was, it was argued, in the nature of a right of way. The portion of concrete that adjoined the hangar did not, it was said, by mere proximity or by the fact that aircraft were taken there for testing become part of the close, curtilage or precincts of the hangar. These contentions were accepted by the judge, but the court felt unable to come to the same conclusion. In the court's view, this apron was within the close, curtilage or precincts of the hangar and the position of the fence must be regarded as the limit of the close, curtilage or precinct. In order to satisfy the requirements of s. 151 (6) the place where the concrete was being broken must be shown to be " a place solely used for some purpose other than the processes used in the factory." That question must be largely a question of fact and degree. In order not to interfere with access to and from the hangar the work was done in pre-arranged strips. Thus the place where the concrete was being broken by the defendants was being used solely for some purpose other than assembling or testing aircraft, for no aircraft could go on to it for any purpose. Therefore, s. 151 (6) applied to the place of the accident and excluded it from the operation of the Factories Act, 1937. The appeal therefore failed.

APPEARANCES: *John Platts-Mills* (*Pearce & Sons*); *Martin Jukes*, Q.C., and *Bernard Caulfield* (*J. F. Coules & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 1

FATAL ACCIDENTS ACTS: DAMAGES: PAYMENT UNDER GROUP INSURANCE POLICY

Green *v.* Russell; McCarthy, third party

Hodson, Romer and Pearce, L.JJ. 14th May, 1959

Appeal from Ashworth, J. [1959] 1 Q.B. 28; 102 SOL. J. 620.

By s. 1 of the Fatal Accidents (Damages) Act, 1908: " In assessing damages in any action . . . under the Fatal Accidents Act, 1846, . . . there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance . . ." In 1951 an employer took out a personal accident group insurance policy which, after reciting: " Whereas the insured is desirous of securing payment of benefits as hereinafter set forth to any insured person," provided that " if . . . any insured person shall sustain bodily injury " resulting in death, the insurance company should pay a specified sum, and that " the company shall be entitled to treat the insured as the absolute owner of this policy and shall not be bound to recognise any equitable or other claim to or in the policy and the receipt of the insured . . . alone shall be an effectual discharge." The policy described the employer as the " insured " and named as the " insured persons " certain of his employees. Those employees knew of the existence of the policy but it formed no part of the terms of their employment, nor did the employer undertake any obligation to maintain or renew the policy. In 1955 one of the employees named as an " insured person " died in a fire which occurred on the employer's premises. The plaintiff, the employee's mother, brought an action under the Fatal Accidents Acts in which liability was admitted and damages were agreed at £1,300. The question was whether a sum of £1,000, paid under the policy by the insurance company in respect of the death to the employee's solicitors and paid by them to the employee's mother, was a benefit arising out of the death which should be taken into account and deducted from the agreed damages. Ashworth, J., gave judgment for the plaintiff and the defendant appealed.

ROMER, L.J. (with whom HODSON, L.J., agreed) said that, on the authorities as they stood, it seemed clear that the employee had no right at common law to claim under the contract of insurance into which the company entered with the employer, and for which the employee himself gave no consideration. The next question was whether the employee had an equitable interest in the policy, and in the sum which was paid on, and in respect of, his death. An intention to provide benefits for someone else, and to pay for them, did not in itself give rise to a trusteeship; and yet that was all that emerged from the recital. Nor did the judge's finding that the existence of the policy was known to

the employees in such a manner as to create in them a reasonable expectation of benefit affect the matter. It was not legitimate to import into the contract the idea of a trust when the parties had given no indication that such was their intention. It followed that the employee had no right, whether at law or in equity, to claim under the policy, and the only question was whether, nevertheless, the plaintiff could, on other grounds, claim exemption from accountability for the £1,000 by virtue of s. 1 of the Act of 1908. Section 1 was not envisaging only payments made directly to the employees or their dependants, but extended to payments contractually made to or on behalf of or for the benefit of the employees or dependants. In *Bowskill* v. *Dawson* (*No. 2*) [1955] 1 Q.B. 13, payments were held to be within the Act of 1908 which were made by the insurers to trustees on behalf of the employees; and it would be within the language of the section and the general sense of the legislation, to hold that if sums were received by an employer under a scheme which was designed for the benefit of the employees, but without conferring any enforceable right on them, and he paid the sums over to the estates or dependants of the men when the risk matured, then the provisions of the Act applied. It would be an undue restriction on the language used in s. 1 to hold that it did not apply to the terms and provisions of the employer's policy, and to the facts of the present case. In his lordship's opinion the section did apply, and he would dismiss the appeal.

PEARCE, L.J., agreeing, said that he agreed with Ashworth, J., when he said: "In my judgment the expression 'paid or payable on the death of the deceased under any contract of insurance' is descriptive of the sum itself, and does not involve by implication the corollary that the sum was paid or payable to the deceased under the contract of insurance." The legislature contented itself with describing the nature of the moneys that were not to be taken into account, without seeking to limit the exact path of those moneys or specifying from whom and by whom they had to be received. Since the Act introduced an exception to the general rule, the words must not be strained to achieve any meaning beyond their clearly avowed intention; but they were entitled to be read in their simple normal sense without any gloss or artificial restrictions. On the facts of the case, the £1,000 paid by the defendant to the plaintiff was, in the normal sense, money paid on the death of her son under a contract of insurance. Appeal dismissed.

APPEARANCES: *M. Dunbar Van Oss* (*Greenwoods*); *Marven Everett*, Q.C., and *John Ritchie* (*Abbott, Baldwin & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 17**

Chancery Division

COMPANY: WINDING UP: DEBTS PURCHASED BY CONTRIBUTORIES AFTER CALL: WHETHER LIABILITY REDUCED

***In re* Apex Film Distributors, Ltd.**

Wynn Parry, J. 7th May, 1959

Motion.

In the compulsory winding up of a company the liquidator made a call on contributories who had transferred their shares within the year preceding the winding up. After the call, the contributories purchased certain debts of the company which had been proved in the liquidation and which were owing before they had transferred their shares. The debtors then released the company, the contributories and the liquidator from all liability in respect of those debts. By the motion the contributories asked for a declaration that their liability on call was reduced by the amount of the debts thus purchased.

WYNN PARRY, J., said that he thought that the answer turned on two sections of the Companies Act, 1948, namely, ss. 212 and 214. Section 212 provided how the liability of a contributory was to be measured. By s. 214 the liability of the contributory, which came into existence when he first became a member, created a debt which in England was in the nature of a specialty. That debt became payable when a call was made. That result was brought about by the express terms of s. 214. It followed that, once that debt became payable, the only way in which it could be extinguished was by payment, and that once the debt became payable it was not open to a contributory to reduce his liability by buying up any of the debts owed by the company before he transferred his shares, because the result of so doing would be to reduce the amount of the debt which the statute clearly said that he owed. On this reasoning there was no room for extending the rule laid down in the two *Brett Cases* (1871), 6 Ch. App. 800; (1873), 8 Ch. App. 800. If it were to be extended, he could foresee grave administrative difficulties arising in liquidations. It was true that his conclusion was contrary to the view accepted by Bacon, V.-C., in *Marsh's Case* (1871), 13 Eq. 388; but he had felt it necessary to come to his own conclusion on the matter. In the result the motion would be dismissed and he would declare that the liability of the contributories had not been reduced by the release of the debts.

APPEARANCES: *J. G. Strangman*, Q.C., and *G. B. H. Dillon* (*Allen & Overy*); *Kenneth Mackinnon*, Q.C., and *Michael Wheeler* (*Linklaters & Paines*); *M. J. Roth* (*Stanley Jarrett & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 8**

COPYRIGHT: WHETHER PUBLICATION OF EXTRACTS FROM FOOTBALL CHAMPIONSHIP FIXTURES LIST ON FOOTBALL POOLS COUPONS INFRINGEMENT OF COPYRIGHT

Football League, Ltd. *v.* Littlewoods Pools, Ltd.

Upjohn, J. 13th May, 1959

Action.

The plaintiffs, the Football League, Ltd., were incorporated to promote association football and to arrange football competitions for their member clubs, which were grouped in four divisions. The rules of the league provided for the arrangement and subsequent confirmation at annual meetings of league championship fixtures, copyright in such fixtures to be vested in the league. In the championship each club in each division played every other club in the division twice in a season, once at home and once away. When each club had indicated its wishes as to the arrangements for matches in answers to a questionnaire sent out by the league, the clubs' fixtures lists were compiled by one, *S*, who received a fee from the league for so doing, it being agreed that the copyright should belong to the league, and *S* (who had done the work for some years) had from time to time made assignments of the copyright in their favour. The compilation entailed a great deal of work and required a high degree of skill and ingenuity. The clubs' fixtures list was circulated to the clubs, and after they had made any necessary amendments, and an annual fixtures meeting, at which remaining difficulties were settled, had been held, *S* prepared a chronological fixtures list. This list was printed with the names of the clubs in alphabetical order and sent to the clubs and the Press upon payment, a claim to copyright and a warning against reproduction without permission being printed upon it; it was also published in the same form in the Football League Handbook for the season. The making of the chronological list was not difficult but it required hard work and a painstaking accuracy. The defendants, Littlewoods Pools, Ltd., ran a system of gambling based on the results of the league matches, and each fortnight they sent out to their customers coupons containing lists of fixtures which were admittedly copied from the league's chronological list of which they had procured a copy. The league brought this action against the defendants as a test action, claiming, *inter alia*, a declaration that they were entitled to a subsisting copyright in the chronological lists, and an injunction to restrain the defendants from infringing the copyright, in which the defendants denied the existence of any copyright.

UPJOHN, J., reading his judgment, said that the word "any" in s. 2 (5) (*a*) of the Copyright Act, 1956, did not extend the definition of included material beyond that in the Copyright Act, 1911, and the matter fell to be determined in accordance with the principles laid down under the earlier Acts. Copyright could be claimed for a compilation such as the chronological list if it was shown that some labour, skill, judgment or ingenuity had been brought to bear upon it, the amount required being a question of fact and degree in every case. There could be no copyright in the mere publication of information, but the programme of fixtures had of necessity to be reduced to writing and if, as a result of the whole of his cogitations, *S* produced in a particular form the season's list, the league were entitled to claim that it was produced as the result of the entire skill, labour,

time, judgment and ingenuity of themselves, their servants or agents. It was not possible to dissect and break down the efforts of *S* into the preparation of the clubs' list and its reproduction in the chronological list. If, contrary to that view, the only work of compilation consisted in the production of the chronological list from the clubs' list, that involved sufficient painstaking hard work and labour to justify the existence of copyright and his lordship would have been prepared to find in the league's favour on that ground also. His lordship did not have to decide whether, had the defendants prepared their own lists by "scrambling" the order of matches so that the divisions were mixed up and there was no alphabetical order, they would have been using only the information and not reproducing the compilation. The defendants had copied exactly the relevant part of the league's list for each week and that systematic pirating week by week deliberately and under a claim of right amounted in the end to a reproduction of the compilation and an infringement. His lordship would declare that the league were entitled to copyright in the chronological list and that by copying it in their coupons for the 1958–59 season the defendants had infringed the league's copyright, but he would not grant an injunction since the 1958–59 season was now over and the list for next season was not yet in existence. Declarations accordingly.

APPEARANCES: *Sir Milner Holland*, Q.C., and *F. E. Skone James* (*Johnson, Weatherall & Sturt*, for *Parker, Rhodes & Co.*, Rotherham); *K. E. Shelley*, Q.C., and *I. W. Falconer* (*Jaques & Co.*, for *North, Kirk & Co.*, Liverpool).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 42**

TRUST AND TRUSTEE: UNIT TRUST: DISTRIBUTIONS DESCRIBED AS CAPITAL NOT WHOLLY CAPITAL: WHETHER APPORTIONABLE

In re Whitehead's Will Trusts
Public Trustee *v.* White and Others

Harman, J. 13th May, 1959

Adjourned summons.

A testatrix by her will empowered her trustees to retain any unauthorised trustee investments. Among the investments comprising her residuary estate were a number of sub-units in fixed investments trusts, the sub-units being a share of a unit which comprised various investments. Certain of the half-yearly distributions from the trusts were described as capital; the trust deeds required the warrants or cheques for payment to distinguish between capital and income, but did not recognise any equitable interests in the sub-unit. According to the explanations accompanying the payments most of the items so described arose from the sale of bonus shares, although others arose from some form of dividend payment. A summons was taken out by the trustees to determine whether the so-called items were to be treated as capital or income for the purposes of the will of the testatrix.

HARMAN, J., said that in the present case, the distributing companies were those included in the unit portfolio, and the trust accordingly received the shares or cash impressed with the character to which their intentions pointed. Was this process to be repeated when the trust carrying into effect the terms of the trust deed made distributions to the holders of sub-units? He did not think that there was any authority on this point, but would assume the answer to be affirmative. Looking at the trust deed, he did not find that it directed the trust to alter the nature of the money or securities received. It was, *inter alia*, argued that the testatrix who was the owner of the sub-units ought to be taken to have agreed to abide by the decision of the trust as to what part of their yield was capital and what income, and that having authorised her trustees to retain the sub-units she had put them in a like position. He came to the conclusion that the provisions in the trust deeds requiring the trust to distinguish between capital and income were merely inserted for income tax purposes in an effort to ensure that the portions described as capital should not be treated in the recipient's hands as subject to income tax. The case might be considered as analogous to *In re Doughty* [1947] Ch. 263. His lordship did not think there could be any authority directly in point. The will trustees must, notwithstanding the provisions of the trust deeds, which did not affect anything beyond the absolute rights of the registered holders, inquire in any case of doubt into the source of each distribution which was labelled a capital distribution and treat it as income or capital just as if they were the direct shareholders of the shares included in the portfolio.

APPEARANCES: *E. I. Goulding and Mervyn Davies* (*Gardiner and Co.*, for *D'Angibau & Malim*, Boscombe); *T. L. Dewhurst* (*Donovan J. Smalley & Co.*, for *D. J. Hall*, Ilford, Essex).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 33**

Queen's Bench Division

DAMAGES: PERSONAL INJURIES: AWARD OF DISABLEMENT GRATUITY: DEDUCTION FROM SPECIAL DAMAGE

Roberts *v.* Naylor Bros., Ltd.

Paull, J. 24th April, 1959

Action.

The plaintiff, a steel erector, was injured due to the negligence of the defendants. Special damage amounted to £106; his disablement was assessed under s. 12 of the National Insurance (Industrial Injuries) Act, 1946, at 5 per cent. and he received a disablement gratuity of £67 10s.

PAULL, J., said that counsel for the plaintiff contended that, in considering how the provisions of s. 2 of the Law Reform (Personal Injuries) Act, 1948, should be applied to the sum of £67 10s., that sum was a payment in respect of the plaintiff's life, and, as the provisions of the 1948 Act said that it should be in respect of the period of "five years beginning . . . when the cause of action accrued," the proper way was to take away the six months during which he received an interim assessment, and therefore take a proportion of four and a half years to life. He said that "life" meant life expectation on the Ministry of Labour life expectation figures. So that you took four and a half divided by the number of years which the Ministry's life expectation figures would produce in the case of the plaintiff, and half of that proportion was to be deducted. Counsel for the defendants contended that the defendants, by the words of the section, should have credit for half of the whole sum paid, that is to say, they should have credit for £33 15s. But the plaintiff was not, as his counsel submitted, under the 1946 Act, entitled to weekly payments which were to be translated into a lump sum. Parliament had chosen to divide disabilities into those under 20 per cent. and those over 20 per cent., and to say that, in the case where the disability was under 20 per cent., then the payment was not in any way a weekly payment, but was a definite lump sum. It was true that that was in respect of his disability during the whole of his lifetime, but, nevertheless, it was a lump sum. So that which had accrued, or which would accrue within s. 2 (1) of the 1948 Act, was that lump sum. Therefore, the court must deduct one-half of the value of that right which had accrued.

APPEARANCES: *Peter Pain* (*W. H. Thompson*); *Desmond Ackner* (*Carpenters*, for *G. Keogh & Co.*, Bolton).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 718**

ROAD TRAFFIC: TAKING AND DRIVING AWAY: ASSOCIATION BETWEEN DRIVER AND PASSENGER

Ross *v.* Rivenall

Lord Parker, C.J., Donovan and Salmon, JJ.

1st May, 1959

Case stated.

A locked motor car with no ignition key in it and only sufficient petrol to travel six miles, was taken and driven away without the owner's consent. At 1.55 a.m. on the day in question the car was found stranded without petrol six miles away, with four men in it, one of whom was the defendant, who was sitting in the back seat. The car's lights were on, but there was no ignition key and the wiring had been tampered with. When the defendant was told he was going to be arrested he made no reply, but when he got to the police station, according to a police officer, he said: "A bloke stopped and asked me if I wanted a lift so I got in." The defendant was convicted before a magistrates' court of unlawfully taking and driving away a motor vehicle, and unlawfully using the vehicle without there being in force a policy of insurance. On appeal, at the end of the prosecution case, the recorder held that the prosecution

had failed to make out a case on either charge for the defendant to answer. The prosecutor appealed.

LORD PARKER, C.J., said that where, as in the present case, four men were found in a motor car at 1.55 in the morning, out of petrol six miles from where the car was taken, and when arrested, said nothing, there was clearly a case to go to the jury that those four men were acting in concert. If that did not constitute evidence of acting in association, it would be almost impossible in cases such as the present to prove a case against anyone but the driver of the car. His lordship was quite satisfied that a *prima facie* case of association between the defendant and the driver of the car was made out, and the appeal would be allowed and the case remitted to the recorder.

DONOVAN, J., agreeing, said that at first he thought the prosecution's contention was that mere presence in a car which had been taken and driven away without consent was sufficient evidence of complicity in the offence. Such a proposition would be unacceptable, but the contention really was that the presence of the defendant in the car in the circumstances of the present case raised a *prima facie* case against him of acting in concert with the other occupants. His lordship agreed that all the circumstances when taken together did call for answer on the defendant's part, and that the appeal should be allowed.

SALMON, J., agreeing, said that the only doubt he had felt was as to what the recorder did decide. If, at the end of the prosecution case, he had found that there was in law some evidence against the defendant but that it was not strong enough to call for an answer, his lordship doubted that the court could have interfered. His lordship, however, had come to the conclusion that on a fair reading of the case, the recorder decided that there was no evidence to support the charge. That was a wrong conclusion on a point of law for there was evidence for him to consider.

APPEARANCES: *Paul Wrightson* (*The Solicitor, Metropolitan Police*); *R. J. Trott* (*Mitchells*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[1 W.L.R. 713**

DAMAGES: PERSONAL INJURIES: AMOUNT TO BE DEDUCTED FROM SPECIAL DAMAGES IN RESPECT OF GRATUITY

Perez *v.* C.A.V., Ltd.

Edmund Davies, J. 8th May, 1959

Action.

The plaintiff, a machine operator, was injured due to the breach by the defendants of their statutory duty under s. 14 of the Factories Act, 1937. Six months after the injury the plaintiff's disability was assessed at 9 per cent. and he received a lump sum disablement gratuity of £140 under s. 12 (6) of the National Insurance (Industrial Injuries) Act, 1946. The question arose as to how this gratuity was to be taken into account under s. 2 (1) of the Law Reform (Personal Injuries) Act, 1948.

EDMUND DAVIES, J., said that, assuming the gratuity was £*x*, for the defendants it was contended that $\frac{£x}{2}$ must be deducted from " the loss of earnings or profits which has accrued or probably will accrue to the injured person from the injuries." It was agreed that, if that was the right view, no special damages were recoverable. On the other hand, it was submitted by the plaintiff that what had to be taken into account was merely such sum as would bear the same proportion to $\frac{£x}{2}$ as that part of the five years from the accident which remained unexpired when the gratuity was paid bore to the plaintiff's estimated expectation of life. It was agreed that, if that were the correct method, the plaintiff would be entitled to recover £23 special damages. A hypothetical example would serve to illustrate the opposing contentions. Assuming that one year from the accident the plaintiff was paid a gratuity of £100 when he was fifty years old and assuming further a life expectation at that time of twenty years, on those facts, the defendants would contend that the 1948 Act required the court to take into account one moiety of £100, namely, £50. If the plaintiff was right, the appropriate figure on those facts would be four-twentieths of £50, namely £10. In *Roberts* v. *Naylor Bros., Ltd.*, p. 491, *ante*, Paull, J., accepted the defendants' argument and deducted one-half of the total gratuity paid. So to hold seemed to give inadequate attention to the point that the lump sum payment was made, not merely in respect of rights to benefits which had accrued or would accrue during the five-year period, but was, as it were, a compounding of those benefits which would, but for the gratuity provision, continue to be paid throughout life in respect of a disability regarded as subsisting throughout the same period. For this reason he accepted the plaintiff's contention; in the result £23 must be added to the general damages.

APPEARANCES: *Kenneth Potter* (*Evill & Coleman*); *Ronald Hopkins* (*Carpenters*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 724**

"THE SOLICITORS' JOURNAL," 18th JUNE, 1859

ON the 18th June, 1859, THE SOLICITORS' JOURNAL mentioned the report of Mr. Perry, inspector of the southern district of prisons: " The condition of the prisons was, with a few exceptions, generally satisfactory and in the past year the system of separate confinement has been introduced into the jail of Newgate. Regret is expressed that the plan for the improvement of Coldbathfields Prison has not been carried out: its present state is not only anomalous, but, to a certain extent, discreditable to the County of Middlesex. Mr. Perry very properly calls the visiting justices of the Brecon (Wales) County Jail to account for putting certain prisoners in irons for two months, there being no legal warrant for so doing except for the purpose of controlling violence or preventing escape. At Bodmin one step has been taken towards the scheme of executing persons privately. The 'drop' has been removed from the front of the prison, where it was visible to an almost unlimited number of spectators, to the back of the building where it is eclipsed by the boundary wall . . . At Springfield Jail in Essex there is a great want of some kind of work for the prisoners to be performed in their cells, where in winter they must often be left for 16 hours to darkness. Mr. Perry also justly condemns the cruel puritanical regulation at this prison which debars the prisoners from all exercise whatever on Sundays . . . We believe the justices of Springfield have been before called to account for this barbarous practice. The accommodation for debtors in the Chapel of this jail is very insufficient. At Cardiff Jail the prisoners appear to have been much underfed but the dietary has been improved. Mr. Perry boldly speaks out when he finds a prisoner in bad hands and appears to have been most conscientious in examining the details of the various systems adopted in the prisons under his inspection."

TERMS AND CONDITIONS OF EMPLOYMENT ACT, 1959

The Terms and Conditions of Employment Act, 1959, which received the Royal Assent on 30th April, came into operation on 30th May. It incorporates a new section providing for the determination of " claims " that a particular employer is not observing recognised terms and conditions of employment. Cases of this kind had previously been dealt with under the name of " issues " by the Industrial Disputes Tribunal, which was abolished on 1st March last.

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